

receipt of accrued fees (or promise to pay such fees), NACIC will promptly inform the requester in writing of those records or portions of records which may be released and which must be denied. With respect to the former, NACIC will provide copies; with respect to the latter, NACIC shall explain the reasons for the denial, identify the person(s) responsible for such decisions by name and title, and give notice of a right of administrative appeal.

(c) *Availability of reading room.* As an alternative to receiving records by mail, a requester may arrange to inspect the records deemed releasable at a NACIC “reading room” in the metropolitan Washington, DC area. Access will be granted after applicable and accrued fees have been paid. Requests to review or browse documents in our database of “officially released records” will also be honored in this manner to the extent that paper copies or electronic copies in unclassified computer systems exist. All such requests shall be in writing and addressed pursuant to § 1800.3. The records will be available at such times as mutually agreed but not less than three (3) days from our receipt of a request. The requester will be responsible for reproduction charges for any copies of records desired.

Subpart D—Additional Administrative Matters

§ 1800.31 Procedures for business information.

(a) *In general.* Business information obtained by NACIC by a submitter shall not be disclosed pursuant to a Freedom of Information Act request except in accordance with this section. For purposes of this section, the following definitions apply:

Business information means commercial or financial information in which a legal entity has a recognized property interest;

Confidential commercial information means such business information provided to the United States Government by a submitter which is reasonably believed to contain information exempt from release under exemption (b)(4) of the Freedom of Information Act, 5 U.S.C. 552, because disclosure could

reasonably be expected to cause substantial competitive harm;

Submitter means any person or entity who provides confidential commercial information to the United States Government; it includes, but is not limited to, corporations, businesses (however organized), state governments, and foreign governments; and

(b) *Designation of confidential commercial information.* A submitter of business information will use good-faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, any portions of its submission that it considers to be confidential commercial information and hence protected from required disclosure pursuant to exemption (b)(4). Such designations shall expire ten (10) years after the date of the submission unless the submitter requests, and provides justification for, a longer designation period.

(c) *Process in event of FOIA request—*
(1) *Notice to submitters.* NACIC shall provide a submitter with prompt written notice of receipt of a Freedom of Information Act request encompassing business information whenever:

(i) The submitter has in good faith designated the information as confidential commercial information, or

(ii) NACIC believes that disclosure of the information could reasonably be expected to cause substantial competitive harm, and

(iii) The information was submitted within the last ten (10) years unless the submitter requested and provided acceptable justification for a specific notice period of greater duration.

(2) *Form of notice.* This notice shall either describe the exact nature of the confidential commercial information at issue or provide copies of the responsive records containing such information.

(3) *Response by submitter.* (i) Within seven (7) days of the above notice, all claims of confidentiality by a submitter must be supported by a detailed statement of any objection to disclosure. Such statement shall:

(A) Specify that the information has not been disclosed to the public;

(B) Explain why the information is contended to be a trade secret or confidential commercial information;

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(C) Explain how the information is capable of competitive damage if disclosed;

(D) State that the submitter will provide NACIC and the Department of Justice with such litigation defense as requested; and

(E) Be certified by an officer authorized to legally bind the corporation or similar entity.

(ii) It should be noted that information provided by a submitter pursuant to this provision may itself be subject to disclosure under the FOIA.

(4) *Decision and notice of intent to disclose.* (i) NACIC shall consider carefully a submitter's objections and specific grounds for nondisclosure prior to its final determination. If NACIC decides to disclose a document over the objection of a submitter, NACIC shall provide the submitter a written notice which shall include:

(A) A statement of the reasons for which the submitter's disclosure objections were not sustained;

(B) A description of the information to be disclosed; and

(C) A specified disclosure date which is seven (7) days after the date of the instant notice.

(ii) When notice is given to a submitter under this section, NACIC shall also notify the requester and, if NACIC notifies a submitter that it intends to disclose information, then the requester shall be notified also and given the proposed date for disclosure.

(5) *Notice of FOIA lawsuit.* If a requester initiates a civil action seeking to compel disclosure of information asserted to be within the scope of this section, NACIC shall promptly notify the submitter. The submitter, as specified above, shall provide such litigation assistance as required by NACIC and the Department of Justice.

(6) *Exceptions to notice requirement.* The notice requirements of this section shall not apply if NACIC determines that:

(i) The information should not be disclosed in light of other FOIA exemptions;

(ii) The information has been published lawfully or has been officially made available to the public;

(iii) The disclosure of the information is otherwise required by law or federal regulation; or

(iv) The designation made by the submitter under this section appears frivolous, except that, in such a case, NACIC will, within a reasonable time prior to the specified disclosure date, give the submitter written notice of any final decision to disclose the information.

[64 FR 49879, Sept. 14, 1999; 64 FR 53769, Oct. 4, 1999]

§ 1800.32 Procedures for information concerning other persons.

(a) *In general.* Personal information concerning individuals other than the requester shall not be disclosed under the Freedom of Information Act if the proposed release would constitute a clearly unwarranted invasion of personal privacy. See 5 U.S.C. 552(b)(6). For purposes of this section, the following definitions apply:

Personal information means any information about an individual that is not a matter of public record, or easily discernible to the public, or protected from disclosure because of the implications that arise from Government possession of such information.

Public interest means the public interest in understanding the operations and activities of the United States Government and not simply any matter which might be of general interest to the requester or members of the public.

(b) *Determination to be made.* In making the required determination under this section and pursuant to exemption (b)(6) of the FOIA, NACIC will balance the privacy interests that would be compromised by disclosure against the public interest in release of the requested information.

(c) *Otherwise.* A requester seeking information on a third person is encouraged to provide a signed affidavit or declaration from the third person waiving all or some of their privacy rights. However, all such waivers shall be narrowly construed and the Coordinator, in the exercise of his discretion and administrative authority, may seek clarification from the third party prior to any or all releases.